STATE OF MICHIGAN

COURT OF APPEALS

ELIZABETH TURNER, Personal Representative of the Estate of VICTOR BRYANT, Deceased, Plaintiff-Appellant, v LEE RICHARDS, Defendant, and CITY OF GARDEN CITY, Defendant-Appellee.	UNPUBLISHED July 13, 2006 No. 266610 Wayne Circuit Court LC No. 04-404970-NI

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendant Garden City, under MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Lee Richards, a city employee, parked a front-end loader in the middle turn lane of a road and left it running while he operated a backhoe. A vehicle driven by plaintiff's decedent collided with the rear of the front-end loader. He was injured and subsequently died. Plaintiff brought this negligence action against defendants, relying on the motor vehicle exception to governmental immunity, MCL 691.1405. The trial court granted the city's motion for summary disposition finding that the motor vehicle exception did not apply.[1]

[1] The trial court denied defendant Richards's motion for summary disposition. In a prior appeal, this Court reversed the trial court's decision with respect to defendant Richards and remanded for entry of judgment in favor of Richards. *Turner v Richards*, unpublished opinion per curiam of the Court of Appeals, issued August 25, 2005 (Docket No. 260803).

On appeal, plaintiff argues that the trial court erred in granting summary disposition. We disagree. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

MCL 691.1405 provides that a governmental agency "shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner . . . ."

In *Poppen v Tovey*, 256 Mich App 351; 664 NW2d 269 (2003), the plaintiff's vehicle collided with a city water truck that was stopped in the curb lane of a road. It had been stopped approximately three to five minutes so that a city employee could inspect a fire hydrant. With respect to the city's immunity, this Court agreed with the trial court that the plaintiff's injuries did not result from the "operation" of a government-owned motor vehicle. The Court explained that in *Chandler v Muskegon Co*, 467 Mich 315; 652 NW2d 224 (2002),

> the Court concluded that the phrase "'operation of a motor vehicle' means that the motor vehicle is being operated *as* a motor vehicle" and, therefore, encompasses only those "activities that are directly associated with the driving of a motor vehicle." Applying this definition to the undisputed facts of this case, we find no error in the trial court's conclusion that the plaintiff's injuries did not result from "operation" of a government-owned motor vehicle. At the time of the collision, the city vehicle had been stopped for approximately three to five minutes in order to permit its passenger to inspect a public utility. Once stopped for this purpose, its presence on the road was no longer "directly associated with the driving" of that vehicle. Accordingly, the vehicle was not being operated "as" a motor vehicle at the time of the accident and summary disposition in favor of the city was appropriate. [*Poppen, supra*, pp 355-356.]

The present case is comparable to *Poppen*. Richards testified that the front-end loader was stopped and parked for "probably longer" than one or two minutes. He estimated that it was "two to three minutes, it might have been longer." He left it running because the lights were on and he did not want the battery to lose its charge and because it is difficult to restart the engine when left in the cold. No one was inside; Richards was operating a backhoe at the time of the collision.

Plaintiff does not discuss *Poppen*, much less offer any basis for distinguishing it. Instead, plaintiff refers to a parenthetical notation in a footnote in *Chandler, supra*, in which the Court discussed the meaning of the term "operation" in other statutes and stated:

> Moreover, MCL 257.625, prohibiting operating a motor vehicle while under the influence of intoxicating liquor, applies to "operating" in the sense of driving the vehicle. *People v Wood*, 450 Mich 399, 404-405; 538 NW2d 351 (1995) (Once a person using a motor vehicle as a motor vehicle has the vehicle in motion, or in a position posing significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk). [*Chandler, supra*, pp 320-321 n 7.]

This brief reference to the holding of *Woods* does not provide a basis for departing from the reasoning in *Poppen.* We decline to expand the definition of "operation" to include parked and unoccupied vehicles.

In light of our conclusion, we need not address whether a front-end loader is a "motor vehicle" for purposes of MCL 691.1405.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Patrick M. Meter